

## REMARKS

### Section 102(e) Rejection

First, claims 2 and 15 were rejected under 35 U.S.C. §102(e) in the Office Action over Yamazaki et al USP 6,048,758 which the Examiner states discloses a combination "... wherein the silicon oxide nitride film ranges from 0.1 to 1.7 in a ratio of the concentration of oxygen to the concentration of silicon." Office Action, page 2, para. 3.

Yamazaki et al. '758 provides a silicon film 103 over a silicon oxynitride film 102. However, Yamazaki et al does not suggest any composition ratio of the silicon oxynitride film. Therefore, Yamazaki et al does not provide a silicon film over a silicon oxynitride film wherein the silicon oxynitride film ranges from 0.1 to 1.7 in a ratio of the concentration of oxygen to the concentration of silicon.

Accordingly, since a feature of the claims is missing from the art applied by the Examiner, claims 2 and 15 are not anticipated by Yamazaki et al., and withdrawal of the rejection is respectfully requested.

### The Rejection of Claims 1-11 and 14-17 under 35 U.S.C. §102(f)

In paragraph 4 of the Office Action, the Examiner rejects claims 1-11 and 14-17 because, according to the Examiner, the applicant "did not invent the claimed subject matter." The Examiner explains in paragraph 5 that the present application has a different inventive entity than a co-pending application having serial number 09/739,269 and is a broader version of certain claims thereof, specifically independent claims 1-2, 6-7 and dependent claim 10.

Insofar as the rejection is understood, applicants state that the record contains a declaration of inventorship wherein each of the named inventors herein (i.e., Masahiko

HAYAKAWA, Mitsunori SAKAMA, and Satoshi TORIUMI) declared their belief that they are original, first, and joint inventors of the subject matter of the application.

Moreover, even if the present inventors are claiming a broader invention than the inventive entity of 09/739,269, no logical inconsistency is apparent. The present application, having the lower serial number, is the earlier-filed application in the U.S. It was filed on March 22, 2000. The application cited by the Examiner, 09/739,269, was filed on December 19, 2000 – some 9 months later.<sup>1</sup> As the Examiner is asserting that the earlier application is claiming broader subject matter than the later-filed application, the basis for the rejection is not understood. It is unclear why the Examiner should raise a rejection based on a later-filed U.S. application which claims more narrowly.

It is unclear how the facts of record could support a Section 102(f) rejection, and withdrawal of such rejection is respectfully requested.

#### The Rejection Under §103(a)

In paragraphs 6-7 of the Office Action, the examiner rejects claims 1 and 14 under 35 U.S.C. 103(a) over Yamazaki et al USP 6,048,758, which the Examiner cites for disclosing “...wherein the silicon oxide nitride film is about 0.2 in a ratio of the concentration of nitrogen (col. 3, lines 40-44) to the concentration of silicon.”

In this regard, Yamazaki et al USP 6,048,758 provides a silicon film 103 over a silicon oxynitride film 102. However, that citation does not suggest any composition ratio of the silicon oxynitride film. Therefore, it does not provide a silicon film over a silicon oxynitride film

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<sup>1</sup>The filing date of U.S. patent application Serial No. 09/739,269 is December 19, 2000, and that application is assigned to SEL and SHARP KABUSHIKI KAISHA. There is one common inventor, Mitsunori SAKAMA.

wherein the silicon oxynitride film ranges from 0.3 to 1.6 in a ratio of the concentration of nitrogen to the concentration of silicon. Accordingly, at least one of the features of the rejected claims is admittedly absent from the reference, and applicants submit that the Examiner has not made a prima facie case of obviousness of the claimed invention.

#### Provisional Double Patenting

In paragraphs 8-9, claims 1-11 and 14-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting. The double patenting as it applies to co-pending Application No. 09/739,269 is not deemed appropriate for the same reasons as advanced above in traversing the §102(e) rejection and the §103 rejection. The claims do not cross read.

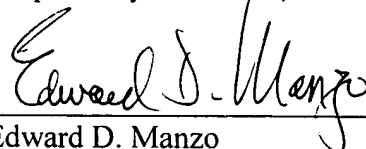
#### Information Disclosure

Applicants in an accompanying IDS submit the following reference for consideration by the Examiner: U.S. Patent No. 5,858,823.

#### Conclusion

Applicants earnestly solicit favorable action. Additional claims are presented, and the fee therefore is enclosed herewith. Any deficiency may be charged to our deposit account 50-1039.

Respectfully submitted,



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